

REQUEST FOR PROPOSAL (RFP)
REAL ESTATE LEGAL SERVICES

I. Background; Intent.

Montgomery County, Maryland (the “County”) seeks to establish contracts with highly-qualified attorneys (“Contractor”) to assist the Office of the County Attorney with the County’s real estate transactions.

The County’s real estate transactions range from very basic transactions such as conservation easements or simple transfers of title to real property to highly complex, multi-faceted commercial transactions.

Simple transactions usually involve the acquisition or transfer of County property and will require title reports, basic document preparation, including deeds, lien releases and other document necessary to clear title, and settlements. They may also include settlements on County loans for affordable housing construction or acquisition or settlements on property obtained through eminent domain.

Some of the simple transactions dealing with eminent domain and agricultural easement acquisitions will require the Contractor to be vigilant in pursuing lienholders (usually senior lenders) for the purpose of obtaining partial releases, as the County will be obtaining less than all of the fee. In addition to obtaining the partial releases, the Contractor will be required to advocate for the County in obtaining the partial release – both in assuaging any lienholder concerns that the partial release will impair its security and in negotiating any “buy down” required by the lienholder as a condition of providing the partial release.

More complex transactions will require these basic services but will also require the Contractor’s intimate knowledge of multi-tiered business entities, multi-layered commercial transactions, best means of securing County assets, including but not limited to securing County assets to minimize potential adverse impacts in the event of bankruptcy, as well as possible interaction with surveyors, environmental consultants and others involved in the due diligence process. The complex transactions tend to be longer and more involved, and will require frequent interaction with the Office of the County Attorney and others over a course of months.

Prospective Contractors are advised that attorneys (and not firms) must respond to this RFP as the County intends to employ individuals, not law firms. In addition, prospective Contractors must clearly indicate whether his or her response to this RFP is to offer services to the County for simple transactions, complex transactions, or both. Care should be taken to describe your transactional experience in detail, but clients do not need to be identified. Finally, prospective Contractors should be aware that the County does not usually purchase title insurance, so remuneration under a contract for services with County will be on an hourly basis.

II. Work Statement.

The Contractors selected under this Request for Proposal must perform, at a minimum, the following services, in accordance with Attachment A:

1. Title search:

- a. The Contractor must submit a report that gives the Contractor's opinion as to the title and describes the status of title to the property, including any and all encumbrances, and must include a certification that the title is clear and marketable (i.e. the title is marketable and insurable at regular rates) and, if not, an explanation of the reasons why it is not. The report by the Contractor (not the abstractor's notes) must be received by the County Attorney within 30 days after the request is made. In the event a quicker turnaround is necessary, the Contractor is not obligated to accept the assignment. Once accepted, however, the shortened deadline must be met. The Contractor is responsible for the timeliness of the abstractor the Contractor has chosen.
- b. The Contractor's report must be accompanied by copies of the deed to the current owner, unreleased mortgages, deeds of trust, liens, and any other recorded documents which indicate a party of interest in the land, unless the County Attorney advises that it has previously obtained such document(s).

2. Settlement:

- a. Settlement must be completed as set forth in the contract unless title is not clear and marketable (i.e. the title is marketable and insurable at regular rates) or the delays are caused by lienholders or other parties of interest in the real estate transaction. The Contractor must keep the County Attorney's Office informed of any issues contributing to the delay in going to settlement.
- b. The Contractor is responsible for all aspects of settlement, including title search and title opinion report; preparation of all documents (unless otherwise advised by the County Attorney's Office), including documents such as lien releases, UCC financing statements, deeds, escrow agreements, settlement statements and 1099 forms. All non-record documents must be returned by the next business day to the County Attorney's Office. Documents that must be recorded among the land records must be recorded on the same day as settlement (unless otherwise approved by the County Attorney's Office) with photocopies of the recorded documents and the receipt from the clerk of the court being returned by the next business day to the County Attorney's Office.
- c. The Contractor is required to maintain an escrow account. The County will wire funds to the Contractor's escrow account for distribution of funds at settlement. Please note, the County requires at least five business days' advanced notice in order to wire the funds for receipt by the settlement date. On occasion, the County may issue payment in the name of the party receiving proceeds from the settlement.
- d. The Contractor is required to maintain an affiliation with a title insurance company qualified to do business in Maryland and provide title insurance at the

County Attorney's request.

- e. The Contractor must be qualified to issue title insurance in the State of Maryland, pursuant to Md. Ann. Code, Insurance Art., Title 10 (2012).

III. Performance Period/Schedule.

1. Assignment of work to be performed under a contract entered into pursuant to this RFP begins from the date of contract signature by the County Attorney and continues for two years. The County Attorney and the Contractor may extend the term of the contract by mutual agreement for up to four (4) additional two-year terms, contingent upon and subject to satisfactory and timely performance by the Contractor, as determined by the County Attorney, and fiscal appropriations.
2. Work may be re-assigned to another Contractor at the County Attorney's discretion, at which time payment will be made for work satisfactorily completed, as determined by the County Attorney, to the date of reassignment.
3. Work will be assigned on a rotating basis among all Contractors providing real estate legal services to the Office of the County Attorney, with an effort toward distribution of assignments balanced in volume and complexity. Work assignments, however, are in the sole discretion of the County Attorney, and the County Attorney may take into account factors including, but not limited to, past performance of the Contractor, experience of the Contractor, and responsiveness of the Contractor to County assignments when making work assignments. The County does not guarantee any minimal level of work assignments.

IV. Compensation.

1. Professional Services:
 - a. For work satisfactorily performed by the Contractor as determined and accepted by the County Attorney, the County will pay the Contractor at the rate of \$250.00 per hour for the work performed by the Contractor responsible under this Contract. The rate will be \$125.00 per hour for the work performed by a party in the capacities of paralegal, legal assistant, law clerk, or similar position of assistance to the Contractor. In the event of a complicated assignment, as determined by the County Attorney, the rate may be increased at the option and sole discretion of the County Attorney.
 - b. On a case-by-case basis the County may purchase title insurance. In the event title insurance is purchased, the County may require the Contractor to offset the title commission amount the Contractor receives through the issuance of the title policy against the fee the County owes Contractor when the consideration is \$2,000,000.00 or more.
2. Cost Reimbursement: No costs, **including Circuit Court copying costs** incurred by the abstractor, will be reimbursed without the prior approval of the Office of the County Attorney. A detailed cost reimbursement policy is outlined in Attachment A to this RFP.

V. Method of Award.

1. Procedure:

- a. All written proposals will be evaluated and ranked by the Office of the County Attorney using the evaluation criteria as stated in subsection 2 of this section.
- b. Interviews will be conducted with the 10 highest scoring offerors based on a score of 100 or above on the evaluation of the written proposals, or all those who score above 100, whichever are fewer. The interview criterion will be as outlined under subsection 2 below.
- c. Contractors must maintain an office in Montgomery County.
- d. The County Attorney will enter into contract negotiations with a minimum of four real estate attorneys who will be Contractors under the Contract.

2. Evaluation Criteria:

- a. Written proposals will be evaluated using the following criteria:
 - (1) Experience of Contractor 50 pts.

In the event a law firm is responding to this RFP, **one** specific attorney of the firm must be responsible for performing all work assignments. It is the experience of this attorney, **not the firm**, that will be rated.
 - (2) Clarity and completeness of mandatory submissions set forth in Section VI below 30 pts.
 - (3) Claims paid against professional liability or title insurance 50 pts.
- b. Interviews will be evaluated on situational questions and responses. The Prospective Contractor will be judged on clarity of communication and the knowledge of real estate legal issues and related subject matters. In the event a law firm is responding to this RFP, the interviewee must be the attorney of the firm who will be the person responsible for performing work assignments 50 pts.

VI. Mandatory Submissions. – Your submission must indicate whether you wish to be considered for simple transactions, more complex transactions, or both.

Failure to include the required submissions may disqualify the proposal as determined by the Office of the County Attorney.

- 1. Evidence of admittance to the Maryland Bar.

2. Evidence of affiliation with a title insurance company authorized to write title insurance in Montgomery County.
3. Evidence of qualification to issue title insurance in Maryland.
4. Evidence of professional liability insurance coverage and limits meeting the requirements set forth in Attachment C to this RFP.
5. Number of claims paid against professional liability and/or title insurance, if any, together with an explanation of the reason for the payment.
6. Number of residential and commercial settlements handled in the last three years. In the event a law firm is responding to this RFP, this response must be for the attorney of the firm who will be the person responsible for performing work assignments. If you wish to be considered for complex transactions, describe in detail at least two transactions you worked on and closed in the last two years. Clients do not need to be identified.
7. County address and phone number.
8. Evidence of Attorney/Client Escrow Account.
9. Sample of title opinion report.

VI. Administrative Requirements.

The attached General Conditions of Contract Between County & Contractor ("General Conditions"), are incorporated by reference and made a part of this RFP as Attachment B. These General Conditions will be applicable to any contract resulting from this Request for Proposal. The insurance types and amounts are set out in Attachment C to this RFP, Mandatory Insurance Requirements.

VII. Contract Formation.

The successful Contractor(s) will be expected to sign the County's form contract as written and to accept the General Conditions, which will be an attachment to the County's form contract, as written. The County's form contract will include the Specifications and Procedures attached to this RFP as Attachment A. The County's form contract is attached to this RFP as Attachment D.